

**RESOLUTION NO. 2012-19**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT WITH CONSULTATIO KEY BISCAYNE LLC FOR A TEMPORARY ACCESS LICENSE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT RELATING TO THE BEACH RENOURISHMENT PROJECT; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the “Village”) has finalized the environmental permitting for the Village Beach Renourishment Project (the “Project”); and

**WHEREAS**, the Village’s permit for the Project provides for access to and from the public right of way to the beach through a portion of the Consultatio Key Biscayne LLC (the “Consultatio”) property; and

**WHEREAS**, Consultatio and the Village desire to enter into a Temporary Access License, Indemnification and Hold Harmless Agreement, in substantially the form attached hereto as Exhibit “A,” (the “Agreement”) for the Project; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**


**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Agreement Approved.** The Village Council hereby approves the Agreement in substantially the form attached hereto as Exhibit “A.”

**Section 3.**     **Village Manager Authorized.** The Village Manager is hereby authorized to execute the Agreement, in substantially the form attached hereto as Exhibit "A," subject to the Village Attorney's approval as to legal form and sufficiency.

**Section 4.**     **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 24th day of April, 2012.

  
MAYOR FRANKLIN H. CAPLAN

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
VILLAGE ATTORNEY



# EXHIBIT "A"

## **TEMPORARY ACCESS LICENSE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

**THIS TEMPORARY ACCESS LICENSE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2012, by and between **CONSULTATIO KEY BISCAYNE LLC**, a Florida Limited Liability Company, having an address of 1200 Brickell Avenue, Suite 1950, Miami, Florida 33131 (the "Consultatio") and the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation having an address at 88 W. McIntyre Street Key Biscayne, Florida 33149 (the "Village").

### **RECITALS:**

**WHEREAS**, the Village desires to commence a Beach Renourishment Project within the Village; and

**WHEREAS**, prior to commencement, the Village is required to obtain permits from the necessary regulatory agencies; and

**WHEREAS**, Consultatio is the owner of certain real property located in Miami-Dade County, Florida commonly known as the former Sonesta hotel property and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Consultatio Property"); and

**WHEREAS**, the Village has represented to the regulatory agencies that it intends to utilize the Consultatio Property for ingress and egress access to and from the beach as a part of the Beach Renourishment Project; and

**WHEREAS**, as such, the Village has requested a non-exclusive license for ingress and egress (the "License") over and across the portion of the Consultatio Property described in Exhibit "B" attached hereto and made a part hereof (the "License Area"); and

**WHEREAS**, Consultatio agrees to grant the Village the License, subject to the Village indemnifying and holding harmless Consultatio for the Village's use of the License Area.

**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Village and Consultatio agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as if repeated at length.
2. **Grant of License.** Consultatio hereby grants to the Village and its agents, a non-exclusive temporary license in favor of the Village for ingress and egress over and across the License Area for hauling sand, equipment, and other materials to and from the beach for the Village's Beach Renourishment Project.
3. **Term of License.** The License shall commence on the date hereof and shall run for the duration of the Beach Renourishment Project.

4. Indemnification and Hold Harmless. To the maximum extent permitted under applicable law, the Village hereby agrees to indemnify, defend (through attorneys chosen by the Village) and hold harmless Consultatio its officials, employees, agents, successors and assigns from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees actually incurred) which may at any time hereafter be asserted against or suffered by Consultatio arising out of or resulting from any and all liability relating in any way to the Village's exercise of its rights hereunder. Nothing in this Agreement shall be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.

5. Enforcement/Venue. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity including, without limitation, specific performance and/or injunction, by both parties, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels. However, Consultatio and Village hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or action of either party. Venue for any cause of action relating to the provisions of this Agreement shall be in a court of competent jurisdiction within Miami-Dade County.

6. Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.

7. Construction. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this Agreement have participated fully in the negotiation of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

8. Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows (or to such other address as either party shall hereafter specify to the other in writing):

For the Village:	Mr. John C. Gilbert, Village Manager
	88 West McIntyre Street, Suite 210
	Key Biscayne, Florida 33149
	Telephone: 305-365-5500
	Fax Number: 305-365-8936

For The Consultatio: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

10. Successors and Assigns. This Agreement shall not be assigned by the Village.

11. Exhibits. All of the Exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

12. Reservation. Consultatio hereby reserves all rights of beneficial ownership in and to the License Area which are not inconsistent with the License, including, without limitation, the right to grant further licenses and easements on, over and/or across the License Area (i.e. utility and/or access easements) and the improvements thereon and the right to use the License Area for all uses not interfering or inconsistent with the uses permitted herein.

13. Amendments. Subject to the other provisions hereof, this Agreement may not be amended or modified except by written agreement of Consultatio and the Village. The Village Manager shall act for Village hereunder.

14. No Recording. Neither this Agreement nor any memorandum or notice hereof shall be recorded in the public real estate records of Miami-Dade County, Florida.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

[Signature Pages to Follow]

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties as of the day and year first above written.

**VILLAGE:**

**Village of Key Biscayne,  
a Florida municipal corporation**

By: \_\_\_\_\_  
John C. Gilbert, Village Manager  
(MUNICIPAL SEAL)

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Conchita H. Alvarez, CMC  
Village Clerk

By: \_\_\_\_\_  
Village Attorney

STATE OF FLORIDA )  
 )  
 ) SS: )  
 )  
 ) COUNTY OF MIAMI-DADE )

**THIS IS TO CERTIFY**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared **John C. Gilbert, Village Manager, for the VILLAGE OF KEY BISCAYNE, A FLORIDA MUNICIPAL CORPORATION**, on behalf of the corporation, who (check one) [ ] is personally known to me or [ ] produced a \_\_\_\_\_ drivers license as identification.

NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

CONSULTATIO:

CONSULTATIO KEY BISCAYNE LLC,  
a Florida Limited Liability Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(CORPORATE SEAL)

STATE OF FLORIDA )

SS: )

COUNTY OF MIAMI-DADE )

**THIS IS TO CERTIFY**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared \_\_\_\_\_, as \_\_\_\_\_ **of CONSULTATIO KEY BISCAYNE LLC, a Florida Limited Liability Company** who (check one) [ ] is personally known to me or [ ] produced a \_\_\_\_\_ drivers license as identification.

NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL I

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW  $\frac{1}{4}$ , SECTION 32 AND FRACTIONAL SECTION 33, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAVNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.W. CORNER OF TRACT 6, SUBDIVISION OF THE PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND, SAID POINT OF BEGINNING ALSO BEING THE S.E. CORNER OF THE PLAT OF HOLIDAY COLONY AS RECORDED IN PLAT BOOK 50 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE CONTINUE EAST FOR A DISTANCE OF 761.0 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE MEANDER NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN FOR A DISTANCE OF 518.3 FEET MORE OR LESS TO A POINT LYING 500.00 FEET NORTH OF THE SOUTH LINE OF TRACT 6 EXTENDED EAST AS MEASURED AT RIGHT ANGLES; THENCE RUN WEST ALONG A LINE 500.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTH LINE OF SAID TRACT 6, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 631.9 FEET MORE OR LESS TO A POINT; THENCE RUN SOUTH  $0^{\circ}38'55''$  WEST FOR A DISTANCE OF 327.79 FEET TO A POINT; THENCE RUN NORTH  $89^{\circ}24'30''$  WEST FOR A DISTANCE OF 157.55 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS NORTH  $89^{\circ}51'26''$  WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY; SAID POINT ALSO BEING A POINT ON THE EASTERLY LINE OF BLOCK 5 OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF  $3^{\circ}14'04''$  AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING.

AND



**PARCEL 2**

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW  $\frac{1}{4}$ , SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAYNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.W. CORNER OF TRACT 6, SUBDIVISION OF THE PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST THE CENTER OF WHICH BEARS NORTH  $86^{\circ}37'22''$  WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY, SAID POINT ALSO BEING THE SE CORNER OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF  $3^{\circ}14'04''$  AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF  $10^{\circ}46'23''$  AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 579.42 FEET TO A POINT; SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF EAST DRIVE; THENCE RUN ALONG THE SAID RIGHT WAY LINE, EAST FOR A DISTANCE OF 160.62 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST; THENCE RUN ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF  $80^{\circ}19'47''$  AND RADIUS OF 25.00 FEET FOR A DISTANCE OF 53.03 FEET TO A POINT OF COMPOUND CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE WEST, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF OCEAN BOULEVARD; THENCE RUN SOUTHERLY ALONG THE SAID WESTERLY RIGHT OF WAY LINE ON THE ARC OF THE CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF  $4^{\circ}03'53''$  AND A RADIUS OF 3260.29 FEET FOR A DISTANCE OF 231.29 FEET TO A POINT; THENCE LEAVING THE SAID RIGHT OF WAY LINE, RUN WEST 1.87 FEET TO A POINT; THENCE RUN SOUTH  $0^{\circ}38'55''$  WEST FOR A DISTANCE OF 327.79 FEET TO A POINT; THENCE RUN NORTH  $89^{\circ}24'30''$  WEST FOR A DISTANCE OF 157.55 FEET TO THE POINT OF BEGINNING.